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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 16090/2022 & C.M.Nos.50220-50221/2022

USHA RANI GIRDHAR Petitioner

Through: Mr.Ved Jain with Mr.Nischay
Kantoor, Advocates.

versus

INCOME TAX OFFICER WARD 36(1),
DELHI & ORS. Respondents

Through: Mr.Zoheb Hossain, Sr.Standing
Counsel for the Revenue with
Mr.Vipul Agrawal and Mr.Parth
Semwal, Advocates.

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Date of Decision: 25th November, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMOHAN, J (Oral):

1. Present writ petition has been filed challenging the notice issued under Section 148 of the Income Tax Act, 1961 ('the Act') dated 25th June, 2021 as well as the notice issued under Section 148A(b) of the Act dated 21st May, 2022, order passed under Section 148A(d) of the Act dated 29th July, 2022 and the notice issued under Section 148 of the Act dated 30th July, 2022 for the Assessment Year 2017-18.

2. Learned counsel for the petitioner states that the order passed under Section 148A(d) of the Act and the notice issued under Section 148A(b) of the Act are on distinct and separate grounds. In support of his contention, he refers to and relies upon the notice dated 21st May 2022 issued under Section 148A(b) of the Act as well as the order dated 29th July, 2022 passed under Section 148A(d) of the Act, wherein it has been stated as under:

A) Notice dated 21st May, 2022

“As per information received from ITO Ward 35(1) it is found that the assessee has sold the property

The details of the financial transactions with respect the sale of property are as udder:-

<i>S. No.</i>	<i>Address of Property sold</i>	<i>Name of the buyer</i>	<i>Sale consideration</i>	<i>Circle Rate</i>	<i>Date of sale</i>
<i>1.</i>	<i>1804,2nd Floor Outram Lane, Kingsway Camp, Delhi</i>	<i>Usha Rani Girdhar</i>	<i>35,00,000/-</i>	<i>12,50,000/-</i>	<i>7.12.2016</i>

As per information, it is found that the assessee has sold a property for the consideration of Rs. 35,00,000/-, however, circle rate cost of the property was Rs. 12,50,000/-. It is found that assessee has filed her ITR for the A.Y 2017-18 declaring income of Rs. 3,47,281/- whereas as per ITR the assessee has not declared the capital gain income on sale of above property. As per the stamp duty authority the value of the property sold by the assessee was of Rs. 12,50,000/- whereas the purchaser paid as per sale deed a consideration of Rs. 35,00,000/-.

B) Order dated 29th July, 2022

“4.

.....The gist of information provided to the assessee is as under:

“As per information received from ITO Ward 35(1) it is found that the assessee has sold the property

The details of the financial transactions with respect the sale of property are as udder:-

<i>S. No.</i>	<i>Address of property Sold</i>	<i>Name of the buyer</i>	<i>Sale consideration</i>	<i>Circle Rate</i>	<i>Date of sale</i>
1.	House No. C-1/1969, Rohini Sector-34, Delhi	Usha Rani Girdhar	Rs.10,00,000/-	Rs. 22,50,000/-	7.12.2016

As per information, it is found that the assessee has sold a property for the consideration of Rs. 10,00,000/-, however, circle rate cost of the property was Rs. 22,50,000/-. It is found that assessee has filed her ITR for the A.Y 2017-18 declaring income of Rs. 3,47,281/- whereas as per ITR the assessee has not declared the capital gain income on sale of above property. As per the stamp duty authority the value of the property sold by the assessee was of Rs. 22,50,000/- whereas the purchaser paid as per sale deed a consideration of Rs. 10,00,000/-.....”

3. He further states that the impugned proceedings for the Assessment Year 2017-18 are barred by limitation in terms of Section 149(1)(b) of the Act as the income alleged to have escaped assessment is Rs. 11,25,000/- i.e. less than Rs. 50,00,000 despite the fact that in terms of Section 149(1)(b) of the Act, proceedings can be initiated after expiry of three years from end of relevant assessment year only if, *inter-alia*, the amount alleged to have escaped assessment is Rs. 50,00,000/- or more.

4. Issue notice. Mr. Zoheb Hossain, learned senior standing counsel accepts notice on behalf of the respondents-revenue. He states that there has been a mistake in Section 148A(b) notice that was issued in the present instance. He states that the mistake has occurred as incomplete information had been initially forwarded to the Assessing Officer by the ITO, Ward 35(1), Delhi. He prays that the Assessing Officer be allowed to issue a supplementary or amendatory notice under Section 148A(b) of the Act

incorporating the corrected details of the property.

5. Having perused the paper book and having heard the learned counsel for the parties, this Court is of the view that the Kingsway Camp property was mentioned in the notice issued under Section 148A(b) of the Act and the petitioner was never asked to explain the transaction with regard to the sale of the Rohini property. This Court finds that not only is the description of the property different in the notice issued under Section 148A(b) of the Act and the order passed under Section 148A(d) of the Act, but also the sale consideration and circle rate in both the documents are different.

6. It seems to this Court that though the Assessing Officer prior to passing the impugned order under Section 148A(d) of the Act realised that he had committed a mistake while issuing the notice under Section 148A(b) of the Act, yet he proceeded with the same and even went to the extent of wrongly stating in the Section 148A(d) order that he had issued the notice under Section 148A(b) of the Act with regard to the Rohini property instead of Kingsway Camp property.

7. A perusal of the file also reveals that the information with the Assessing Officer received from the ITO, Ward 35(1), Delhi was with regard to violation of Section 269SS of the Act and not with regard to non-declaration of long term capital gain, for which the notice had been issued. Consequently, the impugned show cause notice is contrary to the record.

8. This Court in *Catchy Prop-Build Private Ltd. Vs. Assistant Commissioner of Income Tax & Anr., 2022 (10) TMI 771-Delhi High Court* has held, “.....if the foundational allegation is missing in the notice issued under Section 148A(b) of the Act, the same cannot be incorporated by issuing a supplementary notice”.

9. It is further settled law that the intent behind issuing the notice under Section 148A(b) of the Act is to inform the assessee of the allegations against him/her with sufficient particulars so that he/she can put forward his/her defence. In the present instance, the assessee specifically replied to the allegation that was mentioned in the notice issued under Section 148A(b) of the Act and for this, she cannot be faulted with. On the other hand, the Assessing Officer has been negligent in incorporating the incorrect information and in not admitting the fact that he had committed a mistake while issuing a notice under Section 148A(b) of the Act even at the time of passing the order under Section 148A(d) of the Act.

10. Keeping in view the aforesaid, present writ petition is allowed and the show cause notice issued under Section 148A(b) of the Act as well as the order passed under Section 148A(d) of the Act and the notice issued under Section 148 of the Act for the Assessment Year 2017-18 are set aside. However, if the law permits, the respondents-revenue to take further steps in the matter, they shall be at liberty to do so. Needless to state that if and when such steps are taken and if the petitioner has a grievance, she shall be at liberty to take her remedies in accordance with law. Accordingly, the present writ petition along with pending applications stands disposed of.

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

NOVEMBER 25, 2022/KA